

728.307-2

or of the country of the employee's nationality, whichever offers greater benefits. The Department of Labor has granted partial blanket waivers of DBA coverage applicable to USAID-financed contracts performed in certain countries, subject to two conditions:

(1) Employees hired in the United States by the contractor, and citizens or residents of the United States are to be provided DBA insurance coverage;

(2) Waived employees (i.e., employees who are neither U.S. citizens nor U.S. resident aliens, and who were hired outside the United States) will be provided worker's compensation benefits as required by the laws of the country in which they are working or the laws of their native country, whichever offers greater benefits. Information as to whether a DBA Waiver has been obtained by USAID for a particular country may be obtained from the cognizant USAID contracting officer.

(b) To assist contractors in securing insurance at minimal rates for the workmen's compensation insurance required under the DBA, and to facilitate meeting insurance requirements for such coverage, USAID, after open and competitive negotiation, has entered into a contract with an insurance carrier to provide such coverage at a specified rate. The terms of this contract require the insurance carrier to provide coverage, and the contractor to make payments to and handle its claims with that insurance carrier. Contracting officers are responsible for explaining and advising contractors of the details of securing such insurance.

[49 FR 13249, Apr. 3, 1984, as amended at 52 FR 4144, Feb. 10, 1987. Redesignated at 53 FR 50630, Dec. 16, 1988, and amended at 54 FR 16122, Apr. 21, 1989; 56 FR 67224, Dec. 30, 1991]

728.307-2 Liability.

(a)-(b) [Reserved]

(c) *Automobile liability.* In order to ensure that private automobiles used by contractor employees stationed overseas under an USAID contract are properly insured, USAID has established minimum required coverages as a supplement to the FAR clause at 52.228-7. This supplemental coverage is specified in AIDAR 752.228-7, and is to

48 CFR Ch. 7 (10-1-04 Edition)

be used in all USAID-direct contracts involving performance overseas.

[53 FR 50630, Dec. 16, 1988]

728.307-70 Medical Evacuation (MEDEVAC) Services (Mar 1993).

The Contracting Officer shall insert the clause at 752.228-70 in all contracts which require performance by contractor employees overseas.

[59 FR 33446, June 29, 1994]

728.309 Contract clause for worker's compensation insurance.

(a) Because of the volume of projects performed overseas resulting in contracts which require worker's compensation insurance, USAID has contracted with an insurance carrier to provide the required insurance for all USAID contractors. It is therefore necessary to supplement the FAR clause at 52.228-3 with the additional coverage specified in AIDAR 752.228-3. The coverage specified in AIDAR 752.228-3 shall be used in addition to the coverage specified in FAR 52.228-3 in all USAID-direct contracts involving performance overseas.

[53 FR 50630, Dec. 16, 1988]

728.313 Contract clauses for insurance of transportation or transportation-related services.

(a) USAID is required by law to include language in all its direct contracts and subcontracts ensuring that all U.S. marine insurance companies have a fair opportunity to bid for marine insurance when such insurance is necessary or appropriate under the contract. USAID has therefore established a supplementary preface to the clause at FAR 52.228-9. This supplementary preface is set forth in AIDAR 752.228-9, and is required for use in any USAID-direct contract where marine insurance is necessary or appropriate.

[53 FR 50630, Dec. 16, 1988]

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 731.1—Applicability

Sec.

731.109 Advance agreements.

Agency for International Development

731.205-70

Subpart 731.2—Contracts With Commercial Organizations

- 731.205-6 Compensation for personal services.
- 731.205-46 Travel costs.
- 731.205-70 Overseas recruitment incentive.
- 731.205-71 Salary supplements for Host Government employees.

Subpart 731.3—Contracts With Educational Institutions

- 731.370 Predetermined fixed rates for indirect costs.
- 731.371 Compensation for personal services.
- 731.372 Fringe benefits.
- 731.373 Overseas recruitment incentive.

Subpart 731.7—Contracts With Nonprofit Organizations

- 731.770 OMB Circular A-122; cost principles for nonprofit organizations; USAID implementation.
- 731.771 Bid and proposal costs.
- 731.772 Compensation for personal services.
- 731.773 Independent research and development costs.
- 731.774 Overseas recruitment incentive.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

SOURCE: 49 FR 13250, Apr. 3, 1984, unless otherwise noted.

Subpart 731.1—Applicability

731.109 Advance agreements.

Advance agreements on selected costs may be negotiated with USAID contractors by the Overhead and Special Cost and Contract Close-Out Branch, Office of Procurement. Such advance understandings will be applicable to all USAID contracts with that contractor.

[49 FR 13250, Apr. 3, 1984, as amended at 50 FR 50302, Dec. 10, 1985; 51 FR 20651, June 6, 1986]

Subpart 731.2—Contracts With Commercial Organizations

731.205-6 Compensation for personal services.

(a) *General.* When establishing the workweek for employees overseas the contractor will take local and USAID Mission practice into account and will insure that the workweek is compat-

ible with that of those USAID Mission and Cooperating Country employees with whom the contractor will be working.

(b) *Reasonableness.* ADS Chapter 302.5.3 states USAID policy regarding personnel compensation exceeding the maximum annual rate for an Executive Service level ES-6. Consistent with this policy, any employee's or consultant's base salary plus overseas recruitment incentive, if any (see 731.205-70), subject to this policy will be allowable under USAID-direct contracts only if approved in accordance with the essential procedures in ADS chapter E302.5.3. USAID policies on compensation of third country national or cooperating country national employees are set forth in AIDAR 722.170.

(d)-(l) [Reserved]

(m) *Fringe benefits.* USAID's policies on certain fringe benefits related to overseas service, including but not limited to leave, holidays, differentials and allowances, etc. are set forth in the appropriate contract clauses in AIDAR subpart 752.70.

[57 FR 5235, Feb. 13, 1992, as amended at 60 FR 11913, Mar. 3, 1995; 62 FR 40468, July 29, 1997; 64 FR 5008, Feb. 2, 1999]

731.205-46 Travel costs.

It is USAID policy to require prior written approval of international travel by the Contacting Officer. See AIDAR 752.7032 for specific requirements and procedures.

[57 FR 5236, Feb. 13, 1992]

731.205-70 Overseas recruitment incentive.

NOTE: the term *employee* as used in this section means an employee who is a U.S. citizen or a U.S. resident alien.)

(a) If a contractor employee serving overseas under a contract does not qualify for the exemption for overseas income provided under section 911 of the U.S. Internal Revenue Code (26 U.S.C. 911), such employee is eligible to receive an overseas recruitment incentive (ORI), to the extent the ORI: Is authorized by the contractor's normal policy and practice; is deemed necessary by the contractor to recruit and retain qualified employees for overseas services; and does not exceed 10% of

the base salary of the employee from date of arrival at overseas post to begin assignment to date of departure from post at the end of assignment. ORI is to be paid as a single payment at the end of the employee tour of duty overseas. The contractor shall take all reasonable and prudent steps to ensure that ORI is not paid to any employee who has received the IRS section 911 exemption.

(b) In the event that an employee subsequently receives a section 911 exclusion for any part of the base salary upon which this supplement has been paid, such supplement or appropriate portion thereof shall be reimbursed by the contractor to USAID with interest. The interest shall be calculated at the average U.S. Treasury rate in effect for the period that the contractor or his employee had the funds. Neither the contractor's nor the subcontractor's inability to collect refunds from eligible employees shall be used as a basis to excuse subsequent refunds by the contractor to USAID.

[57 FR 5236, Feb. 13, 1992]

731.205-71 Salary supplements for Host Government employees.

(a) *Definitions.* (1) A Host Government (HG) employee is a person paid by the HG, occupying an established position, either temporary or permanent, part-time or full-time, within a HG institution.

(2) An HG institution is an organization in which the government owns at least a fifty percent share or receives at least fifty percent of its financial support from the government.

(b) *General.* Salary supplement occurs when payments are made that augment an HG employee's base salary or premiums, overtime, extra payments, incentive payment and allowances for which the HG employee would qualify under HG rules or practices for the performance of his/hers regular duties or work performed during his/hers regular office hours. Per diem, invitational travel, honoraria and payment for work carried out outside of normal working hours are not considered to be salary supplements subject to the provisions in USAID policy referenced in paragraph (c) of this section.

(c) Salary supplements are eligible for USAID financing only when authorized in accordance with USAID policy established in the cable State 119780 dated April 15, 1988 (on ADS-CD under USAID Handbooks, Handbook 1). If salary supplements have been authorized in a particular case, the Contracting Officer shall provide written approval to the contractor in order for such costs to be eligible. Any specific requirements or limitations shall be specified in the approval.

(d) Contracting Officers shall insert the Clause at 752.231-71 in all contracts in which there is a possibility of the need of HG employees. It should also be inserted in all subsequent subcontracts.

[64 FR 16649, Apr. 6, 1999]

Subpart 731.3—Contracts With Educational Institutions

731.370 Predetermined fixed rates for indirect costs.

Section 635(k) of the Foreign Assistance Act of 1961, as amended, authorizes USAID to use predetermined fixed rates in determining the indirect costs applicable under contracts with educational institutions.

731.371 Compensation for personal services.

(a) *General.* When establishing the workweek for employees overseas the contractor will take local and USAID Mission practice into account and will ensure that the workweek is compatible with that of those USAID Mission and Cooperating Country employees with whom the contractor will be working.

(b) *Salaries and wages.* (1) ADS Chapter 302.5.3 states USAID policy regarding personnel compensation exceeding the maximum annual rate for an Executive Service level ES-6. Consistent with this policy, any employee's or consultant's base salary plus overseas recruitment incentive, if any (see 731.205-70), subject to this policy will be allowable under USAID-direct contracts only if approved in accordance with the essential procedures in ADS chapter E302.5.3.

(2) In considering consulting income as a factor when determining allowable salary for service under a contract:

(i) For faculty members working under annual appointments, salary for service under the contract may include the employee's on-campus salary plus "consulting income" (that is, income from employment other than the employee's regular on-campus appointment, excluding business or other activities not connected with the employee's profession) earned during the year preceding employment under the contract.

(ii) For faculty members working under academic year appointments, salary for service under the contract may include the employee's on-campus academic year salary plus "consulting income" as defined above earned during the year proceeding employment under the contract, or salary for service under the contract may be derived by annualizing the academic year salary (in which case "consulting income" may not be included).

(3) USAID policies and compensation of third country national or cooperating country national employees are set forth in AIDAR 722.170.

[57 FR 5236, Feb. 13, 1992, as amended at 60 FR 11913, Mar. 3, 1995; 62 FR 40469, July 29, 1997; 64 FR 5008, Feb. 2, 1999]

731.372 Fringe benefits.

USAID's policies on certain fringe benefits related to overseas service, including but not limited to leave, holidays, differentials and allowances, etc. are set forth in the appropriate contract clauses in AIDAR 752.70.

[57 FR 5236, Feb. 13, 1992]

731.373 Overseas recruitment incentive.

USAID's policies regarding overseas recruitment incentives are set forth in AIDAR 731.205-70. These policies are also applicable to contracts with an educational institution.

[57 FR 5236, Feb. 13, 1992]

Subpart 731.7—Contracts With Nonprofit Organizations

731.770 OMB Circular A-122, cost principles for nonprofit organizations; USAID implementation.

(a) Paragraph 6 of the transmittal letter for OMB Circular A-122 specifies that "Agencies shall designate a liaison official to serve as the agency representative on matters relating to the implementation of this Circular." The Director, Office of Procurement, has been so designated. The Overhead and Special Cost and Contract Close-Out Branch, Office of Procurement (OCC) provides staff assistance to the Director concerning OMB Circular A-122. OCC is also responsible for obtaining cognizance under the criteria in the transmittal letter for OMB Circular A-122; for liaison with other cognizant agencies; for authorizing exclusion of OMB Circular A-122 coverage for a particular nonprofit organization pursuant to paragraph 5 of the OMB Circular A-122 transmittal letter; and for advice and assistance in applying OMB Circular A-122 cost principles.

(b) Paragraph 4b of the OMB Circular A-122 transmittal letter contains a definition of *prior approval* as follows:

Prior approval means securing the awarding agency's permission in advance to incur costs for those items that are designated as requiring prior approval by OMB Circular A-122. Generally, this permission will be in writing. Where an item of cost requiring prior approval is specified in the budget of an award, approval of the budget constitute approval of that cost.

Consequently, an award containing a budget constitutes prior approval of the direct cost item in the budget, unless otherwise annotated. Accordingly, award budgets should be appropriately annotated substantially as follows:

Inclusion of any cost in the line item budget of this award does not obviate the requirement for prior approval of cost items designated as requiring prior approval by OMB Circular A-122 ; or

In accordance with the requirements to OMB Circular No. A-122, approval is granted to incur costs for (name specific item or

731.771

items) which are included in the budget of this award.

[49 FR 13250, Apr. 3, 1984, as amended at 50 FR 50302, Dec. 10, 1985; 51 FR 20651, June 6, 1986; 56 FR 67225, Dec. 30, 1991]

731.771 Bid and proposal costs.

Pending the establishment of Government-wide principles in Attachment B of OMB Circular A-122, USAID will treat bid and proposal costs as follows:

(a) Bid and proposal costs are the costs of preparing bids, proposals, and applications for potential activities such as Government and non-Government grants, contracts and other agreements, including the development of scientific, cost, and other data needed to support such bids, proposals, and applications. Except as provided in (b) below, bid and proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs for allocation to all current activities, and no bid and proposal costs of past accounting periods will be allocable to the current period. However, if the organization's established practice is to treat bid and proposal costs by some other method, the results obtained may be accepted only if found to be reasonable and equitable.

(b) Bid and proposal costs incurred by the organization to obtain unrestricted funds are to be treated as fund raising and allocated an appropriate share of indirect costs under the conditions described in paragraph B.3 of Attachment A to OMB Circular A-122.

731.772 Compensation for personal services.

The policies set for in AIDAR 731.205-6 are also applicable to contracts with a nonprofit organization.

[57 FR 5236, Feb. 13, 1992]

731.773 Independent research and development costs.

Pending establishment of Government-wide principles in Attachment B of OMB Circular A-122, USAID will apply the cost principles at FAR 31.205-18 for independent research and development costs.

48 CFR Ch. 7 (10-1-04 Edition)

731.774 Overseas recruitment incentive.

USAID's policies regarding overseas recruitment incentives are set forth in AIDAR 731.205-70. These policies are also applicable to contracts with a nonprofit organization.

[57 FR 5236, Feb. 13, 1992]

PART 732—CONTRACT FINANCING

Subpart 732.1—General

Sec.

732.111 Contract clauses.

Subpart 732.4—Advance Payments

732.401 Statutory authority.

732.402 General.

732.403 Applicability.

732.406-70 Agency-issued letters of credit.

732.406-71 Circumstances for use of an LOC.

732.406-72 Establishing an LOC.

732.406-73 LOC contract clause.

732.406-74 Revocation of the LOC.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

Subpart 732.1—General

732.111 Contract clauses.

(a) [Reserved]

(b) USAID may obtain short term and (less frequently) long-term indefinite quantity professional services through Agency-specific indefinite quantity contracts that are a combination of contract types. Rather than using the fixed-price payment clauses for indefinite quantity contracts, when these IQCs provide for fixed daily rates (which may include wages, overhead, general and administrative expenses, fringe benefits, and profit) for services and reimbursement of other direct costs (such as travel and transportation) at cost, then the payment clause at 752.232-7 shall be used in the contract.

[61 FR 39094, July 26, 1996]

Subpart 732.4—Advance Payments

SOURCE: 56 FR 67225, Dec. 30, 1991, unless otherwise noted.